No. 75-1606

IN THE

SUPREME COURT OF THE UNITED STATES OF AMERICA

OCTOBER TERM, 1976

WILLOUGHBY E. LACY. III,
Petitioner,

v.

UNITED STATES OF AMERICA

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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May 3, 1976

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COMES NOW. the petitioner, Willoughby E. Lacy, III, with a firm belief in Jesus Christ, the Holy Scriptures. the Constitution of the United States of America, and that justice will triumph, acting attorney pro se, and prays that a writ of certiorari issue to review the judgment of the Court of Appeals of the Fifth Circuit entered in the above-entitled case on January 20,

1976 and denial of Petition for Rehearing En Banc entered April 5, 1976.

OPINIONS BELOW

The opinion of the Court of Appeals for the Fifth Circuit, as yet unreported, is printed in Appendix A hereto, infra, page 1. The Judgment of the United States District Court, Northern District of Alabama is printed in Appendix A hereto, infra, page 2.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit (Appendix A, infra, page 1 was entered on January 20, 1976 A timely petition for rehearing was denied on April 5, 1976 (Appendix A, infra, page 4). The jurisdiction of the court is invoked under 28 U.S.C. 88 1254 (1), Rule 19(1)(b) U.S. S. Ct.

QUESTIONS PRESENTED

1. Whether the appeal court erred in denying Motion to Strike Counsel of Record and Motion to Strike Appellant Brief, when a

showing was made that counsel was fraudulent, negligent, incompetent, and uncommunicative.

2. Whether the appeal court erred in denying Petition for Rehearing and suggestion for Rehearing En Banc.

3, Whether the appeal court erred in affirming the conviction when the civil standard was used for the word "Willful" in charging the jury in a criminal case.

(A) Whether the appeal court erred in affirming conviction when the term 'Willful" in Original and Supplemental Charges to the Jury amount to Instructions for a Directed Verdict in a Criminal Case.

(B) Whether the appeal court erred in affirming the conviction, when the trial court excluded motive, intent, and purpose as the Defense Bases.

4. Whether appeal court erred in affirming conviction when trial court did not permit Petitioner to demonstrate he was a victim of

selective and discriminatory prosecution.

5. Whether appeal court erred in affirming conviction when trial court committed prejudicial error by excluding testimony as to motive, intent, and purpose for not filing was in order for Petitioner to gain standing before the court for redress.

STATUTES INVOLVED

Title 26. U.S.C., Section 7203:

"Willful failure to file return, supply information or pay tax. Any person. .who willfully fails to make such return. . shall be guilty of a misdemeanor. ."

Title 26, U.S.C., Section 6012:

"(a.) General rule -- Returns with respect to income taxes under subtitle A shall be made by the following: 1. Every individual having for the taxable year a gross income of $600 or more.. 2. Every corporation subject to taxation under subtitle A;

(3) Every estate the gross income of which for the taxable year is $600 or more.

(4) Every trust having for the taxable year any taxable income, or having gross income of $600 or over, regardless of the amount of taxable income. . ."

(b.) Returns made by fiduciaries . . .

(1) Returns of decedents -- If an individual is deceased, the return of such individual required under subsection (A) shall be made by his executor, administrator or other person charged with the property of such decedent.

(2) Persons under a disability -- If an individual is unable to make a return required under subsection (A) . . the return of such individual shall be made by a duly authorized agent, his committee, guardian, fiduciary or other person charged with the care of the person or property of such individual."

Title 26. U.S.C., Section 6011 (a):

"(a.) General rule -- When required by regulations prescribed by the Secretary or his delegate any person made liable for any tax imposed by this title, or for the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary or his delegate. Every person required to make a return or statement shall include therein the information required by such forms or regulations."

Constitution of the United States, Amendment I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

Constitution of the United States, Amendment IV:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Constitution of the United States, Amendment V:

. . . .nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Constitution of the United States, Amendment VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and

district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of Counsel for his defense.

STATEMENT

On February 21, 1975, a Federal Grand Jury in the Northern District of Alabama indicted Appellant, Dr. Willoughby E. Lacy, III, on three misdemeanor counts of willful failure to file income tax returns for the years 1969, 1970, and 1971.

On March 6, 1975, Appellant, accompanied by Counsel, appeared for arraignment and entered a plea of not guilty.

Counsel had met Appellant in Birmingham on March 6, 1975 for arraignment, and Counsel departed for Texas immediately thereafter allowing no time to confer with Defendant

about the background of the case. Appellant did not see or confer with Counsel until April 9, 1975 when he again met him in Birmingham. At that time. Counsel and Appellant had been misled into believing that their appearance in Birmingham on April 9, 1975 was for Pre-trial Conference and Motion hearing. Since they had not discussed the case, neither was prepared for trial. Counsel had filed a Motion for continuance on April 8, 1975 to permit time for Pre-trial Conference and Motion hearings. The Motion was over-ruled. (R.T. 71-93) see infra P. 5-27. The abbreviation "R.T." refers to Reporter's Transcript. Counsel was reluctant to go to trial because insufficient notice had left him unprepared. During the nearly two days he was resisting being forced into trial unprepared, Counsel was informed by Judge McFadden, at one point, that he could withdraw and go back to Texas, but that the doctor (Appellant) was going to be forced to

trial with or without counsel of his choice. (R.T. [redacted]) see infra P. 10.

A jury trial was commenced which resulted in a verdict of guilty to all Three Counts. A sentence was imposed on the First Count of nine months imprisonment and $5,000 fine. Sentence was suspended on Counts Two and Three subject to the conditions of probation and subject to the condition that Appellant file tax returns for the years involved. Judge Pointer made no special condition regarding the payment of taxes; he added the condition that should Appellant fail or refuse to file returns for the years involved, then probation on Counts Two and Three could be revoked and there would be available for sentence two more years of imprisonment and $20,000 additional fine. (R.T. 400 & 401) see infra P. 2-3. Appellant contracted with Counsel to continue on appeal. On Monday, January 26, 1976, Appellant received from Counsel a copy of

notice of transference of his Appeal to Summary calendar issued from the Appeal Court (5th Cir.) on January 12, 1976. Counsel forwarded the notice without comment or cover letter to explain its significance or his delay in informing Appellant about a matter of such urgent importance.

Upon inquiry as to the import of this Summary Calendar, Appellant sent Counsel, Jim Tatum, a letter Dismissing him. (see P. infra 28).

In connection with the Summary Calendar notice, items from Counsel's January 6, 1976 statement aroused suspicions prompting Appellant's wife to call the Clerk's Office of the Fifth Circuit Court of Appeals the following day, Tuesday, January 27, 1976, for clarification.

The items on Mr. Tatum's statement that Appellant specifically questioned as out-of-pocket expenditures were: (See P. infra 29).

(a) Payment to Scofield Printing on July 29, 1975, in the sum of $716.10 for printing costs in Appellant's Case No. 75.2928;

(b) Payment for Plane tickets on November 18. 1975, in the sum of $143.73 for transportation to New Orleans for oral argumentation in Appellant's case.

The question about Plane tickets on November 18, 1975 was resolved by phone call to the Clerk's Office on January 27, 1975. Nothing pertaining to Appellant's Case had occurred on November 18, 1975 at the Fifth Circuit Court of Appeals.

Phone conversations with both Scofield Printing and Scofield Quality elicited that neither had performed printing services in Appellant's Case No. 75-2928, neither house had billed Mr. Tatum for $716.10 or any other amount in this case.

A call to the A.B. Letter Service verified that they had billed Mr. Tatum in the sum of

$57.98, but only for preparing the Appendix that Counsel had submitted in Appellant's Case No. 75-2928. A. B. Letter Service's bill to Counsel was still outstanding; it has since been paid by Appellant.

During her first phone conversation with Clerk's Office on January 27, 1976, Appellant's wife was informed that the Circuit Court had made Summary Decision on January 20, 1976 and to keep his Cause alive, Appellant would have to file a written request for a Time Extension to file a Petition for Re-Hearing within the remaining seven (7) days. Counsel had failed to send Appellant copies of the briefs in his case; the Clerk's Office agreed to forward copies.

With nothing to go on until he received copies of Appellant and Appellee briefs, except Counsel's malpractice of his responsibility to maintain continuing Attorney/Client dialogues, Appellant wrote for an extension of time to

file a Petition for Rehearing based on such grievances. On February 2, 1976, Appellant sent such request to the Clerk's Office by Mail.

On the same day Counsel apparently felt constrained to answer Appellant's letter of dismissal by writing Appellant a short but revealing letter, which follows:

"Doc

I am in receipt of your letter of January 26, 1976 advising me that I am fired. Please have your lawyer contact me regarding this case as you only have a short time to protect your rights. Also please advise when the balance of the account will be paid."

Upon examining the briefs in his Case which Appellant received from Clerk's Office the reasons behind Counsel's chronic 'too little - too late' perfor mances confirmed appellant's suspicions. It was obvious that Counsel had used the facilities of his own Office for duplicating the Appellant brief and was

attempting to defraud Appellant of money under the pretext of out-of-pocket travel and duplication expenditures.

The perfunctory character of the Appellant brief reflects Counsel's disdain for the object of Appeal which is an opportunity to raise pertinent issues and questions not properly dealy with in the court below. And by permitting the Appeal court to consider such issues and questions hereby safeguard Constitutional Rights, Liberties, and Immunities. Counsel's slipshot presentation is so far off target Appellant believes Counsel was anxious to rid himself of Appellant's problems by any means, regardless of how the outcome affected Appellant.

Counsel's quick study habits, faulty memory and tendency to take unwarrented liberties with the truth are best demonstrated by his ineffectual Appellant brief and Appendix. They show Counsel's failure to make a diligent

study of the trial transcript and select for Appellate challenge errors which would have put Appellant's position and situation into perspective for the Jury, had the court below given Appellant a fair and impartial trial. Among other things, Counsel displayed his negligence and incompetence in the following ways for which civil suit against him has been filed for Damages:

(a) Failure to prepare for trial by entering timely motions,

(b) Failure to advise Appellant to be present in the United States District Court on April 7, 1975, for Pre-trial proceedings, even though Counsel did not expect to be there (RA13) See P.A17. "RA" stands for Record Appendix.

(c) Misrepresenting Appellant's intent by infering that Appellant had entertained the idea of entering a Guilty Plea. (RA 14) See P.A18.

(d) Failure to emphasize the connection

between Appellant's placing a full page advertisement in the Wetumpka (Ala.) Herald criticising Internal Revenue practices and policies on January 23, 1975 and his Indictment on Income Tax charges on February 21, 1975, twenty-nine (29) days later. (T 271) See P. A 30 .

(e) Failure to raise and expand in Appellant brief on the error by the Court below in disallowing the Jury to consider material evidence offered as Defense Exhibit 2. being a copy of Internal Revenue Manual Supplement 95G-50 which explains to Internal Revenue Spies how to use Income Tax charges to suppress Protest and Dissent by selective prosecution of individuals it designates as 'Tax Protesters' (Tax Protestants) because they are more vocal than others in their exercise of First Amendment Religio/Political Freedoms (T 289 et seq.) See P. A31 Internal Revenue Manual Supplement 95G-50 See P. A32-37.

(f) And, by such omission, failing to

give himself occasion to point out in Appellant's brief that Internal Revenue's domestic espionage activities against Protesters and Dissenters including 'Tax Protesters' (Tax Protestants) were the subject of an 18 month investigation by the Senate Sub-Committee on Constitutional Rights which published their findings in a highly documented Report in December 1974 entitled POLITICAL INTELLIGENCE IN THE INTERNAL REVENUE SERVICE: THE SPECIAL SERVICE STAFF. And that the Subcommittee's findings stated, in effect, that Internal Revenue's espionage programs were attempts to promote Religio/ Political Orthodoxy by violating the Individual's First Amendment Freedoms and were operating without even a shred of statutory line authority.

(g) Counsel's tendency, to misrepresent Petitioner's intents, motives and posture (T328 & 329) See P. A38-39 and his need to rely on Petitioner to job his memory that Petitioner's

intents, motives and defense posture were and are based entirely on First Amendment Freedoms. (T 330) See P.A40.

(h) Counsel's failure to submit written instructions to enable the judge to properly charge the Jury.

(i) Counsel's failure to defend Petitioner's interests by raising questions in Appellant brief about errors prejudicial to Petitioner's intent, motives and postion which the Trial judge made in his Charge to the Jury. The Court below erred by leading the Jury to believe Petitioner had demonstrated evil intent and purpose in seeking to redress grievances by disobeying income tax statutes Petitioner considers unconstitutional. The Court below committed prejudicial error against Petitioner by telling the Jury that the manner by which one exercises his First Amendment Right to Redress grievances is by public debate, letters to the editor, or presentations to congressmen,

etc., not by disobeying what one regards as unconstitutional legislative enactments. (T 376, et seq.) See P.A41. Redress of grievances cannot be obtained by public debate, letters to the editor or EVEN by petitioning Congressmen or Senators. The business of Congress is to enact legislation NOT TO REDRESS GRIEVANCES. The business of the Courts and Judiciary is to Redress Grievances where the constitutionality of legislative acts is supposed to be tested. Until Petitioner disobeyed the income tax filing statute he had no standing before the Court to test its constitutionality. Had Petitioner filed Income tax returns and thereafter sought to redress his grievances by petitioning the Court for Summary judgment on the constitutionality of the filing statute, his Cause would have been dismissed on the grounds that Petitioner lacked standing. 'Volenti non fit injuria'.

(j) Counsel failed to ask the appeal court for Evidentiary Hearing on the issue of discriminatory prosecution. Petitioner is a victim of impermissible discriminatory prosecution. Recent evidence was turned up in a Case involving a Mobile, Alabama resident, who is a close friend of Petitioner and is the local Minister of a religious denomination called Ministry of Christ Church but is often refferred to simply as IDENTITY. Petitioner has frequently attended meetings of the Identity group at his friends home in Mobile. On one occasion in the early 1970's, FBI agents, who had been outside taking down Automobile License plate numbers during the Church meeting, followed Petitioner part way as he returned to his home in Wetumpka. Tthe new evidence is a letter from the Office Of Regional Counsel for Internal Revenue's Southeast Region and its subect is "Identity Group - Mobile, Alabama". It was received by the Chief of Intelligence in Birmingham on August 14, 1974. Since it speaks of package investigations

and explains how they are set up for prosecution, Petitioner was also a victim of impermissible discriminatory prosecution because of his religious beliefs. (A copy of the letter received by the Chief of Intelligence in Birmingham, Alabama on August 14, 1974) See infra P. A42.

REASONS FOR GRANTING THIS WRIT

1. Petitioner was and is being deprived of his Fifth Amendment privilege against being compelled to witness against himself. Petitioner claimed his privilege by asking the government to grant immunity which has, to this day, been ignored; as a result Petitioner has exercised his privilege by refusing to "witness" against himself on a tax form until such immunity is granted. This privilege has been ignored by the appeal court as well as the trial court. In Roy D. Garner v. United States No 74-100 U.S. S. ct. March 23, 1976 the discussion of this right is made:

"Held: Petitioner's privilege against compulsory self-incrimination was not violated. Since petitioner made incriminating disclosures on his tax returns instead of claiming the privilege, as he had the right to do, . ."

Justice Powell:

"The question is whether the introduction of this evidence, over the petitioner's Fifth Amendment objection, violated the privilege against compulsory self-incrimination when petitioner made the incriminating disclosures on his returns instead of then claiming the privilege."

The court discusses United States v. Sullivan, 274 U.S. 259

"If the form of return provided called for answers that the defendant was privileged from making he could have raised the objection in the return, but could not on that account refuse to make any

return at all."

Had Garner invoked the privilege against compulsory self-incrimination on his returns in lieu of supplying the information used against him, the Internal Revenue Service could have sought to have Garner criminally prosecuted under §§ 7203 . . which provides for willful failure to make a return (see infra P. 4).

From Special Agent Carr B. Barefield's testimony on direct examination (R.T. 109-112) infra P. A43-46

Q. Did you have a conversation?

A. Yes, We had a conversation there.

Q. All right, sir.

A. He told me that he would give me access to his records, provided I would guarantee him immunity from prosecution. I replied that I had no authority to give him immunity from prosecution. But that if he wished to make that request in writing, I would forward it through channels.

Q. All right, sir. Was there any other conversation . . . ?

A. Not that day, no, sir;

Q. And did you have . . . .another conversation with Dr. Lacy?

A. Yes. On February 10th of '72. Six days later I called him again, and reminded him of his -- that he had promised to call me about his records. He said that he would like to meet with me and discuss the matter. I asked him then would he like to meet in my office or in his office. He said he preferred not to come to my office. And he would prefer that I not come to his office. And he suggested then that I meet him at the Wetumpka Cafe. I suggested that a cafe was not a good place to discuss confidential matters, but he insisted we meet there. And we did later in the day. We met at the Wetumpka Cafe, and had a conversation in his automobile in the parking lot there.

Q. All right, sir. Would you relate to the Court and jury that conversation?

A. Well, he again brought up the subject of immunity from prosecution. I again reiterated that I had no authority to grant such a request. I told him during the course of the conversation that if he would make his records avilable, that it would lessen considerably any civil or cirminal penalties that might be involved. That if he did not make his records avilable, we would necessarily have to recompute his income by contacting third parties. Later in the conversation he drew a paper from his pocket from which he read quotations from the Fifth Amendment and from the Fourth Amendment and from a federal law regarding invasion of privacy. . . ."

The paper which is mentioned above as being drawn from petitioner's pocket was a written Grant of Immunity form (see P.PAH7) which was given to Special Intelligence agent

Barefield and it was never heard from again.

The Court further in Garner states:

> "It is constitutionally sufficient, according to the court, that a valid claim of privilege is a defense in a 88 7203 prosecution."

We start with the fundamental proposition that -

> "A witness protected by the privilege may rightfully resuse to answer unless and until he is protected at least against the use of his compelled answers and evidence derived therefrom in any subsequent Criminal case in which he is a defendant." Kastigar v. United States, 406 U.S. 441 (1972).

Absent such protection, if he is nevertheless compellled to answer, his answers are inadmissible against him in a later criminal prosecution. Bram v. United States, (168 U.S. 532); Boyd v. United States, (116 U.S. 616)." Lefkowitz v.

Turley, 414 U.S. 70,78, (1973).

"In Marchetti, supra, at 48-49; Grosso, supra, at 66-67. Since submitting a claim of privilege in lieu of the returns also would incriminate, <u>the Court held that the privilege could be exercised by simply failing to file</u>."

> "In summary, we conclude that since Garner made disclosures instead of claiming the privilege on his tax returns, his disclosures were not compelled incriminations. He therefore was foreclosed from invoking the privilege when such information was later introduced as evidence against him in a criminal prosecution.
>
> The judgment is affirmed."

Further in Garner v. U.S.:

> "The information revealed in the preparation and filing of an income tax return is, for the purposes of Fifth Amendment analysis, the testimony of a "witness,"

"Marchetti and Grosso, of course, removed the threat of a criminal conviction when one validly claims the privilege by failing to file. ."

From the above the logical mind would have to conclude that one need no longer incriminate himself before the I.R.S.; and that the whole affair as has been conducted against the Petitioner by I.R.S., Prosecutors, Grand Juries, and the courts below does not conform to law.

2. Petitioner was not represented by competent Counsel, and thus was deprived of due process of law. At the time of trial Counsel told Petitioner that he (Counsel) was under investigation by the I.R.S. In addition to the above, Counsel was grossly negligent, incompetent, and fraudulent in the manner set out in the section of STATEMENT (of facts). Counsel did not give his entire devotion to Petitioner's motives and interests, did not maintain a warm zeal in defense of Petitioner's rights, and did not exert the utmost of his learning and defense skills and abilities in this case. Instead, Counsel sought to delay Petitioner for lucre while neglecting his duty and responsibilities to Petitioner in the manner condemned by Turner v. State of Maryland. 318 F2d 852, in which the Court said:

"Whether a lawyer is employed by a prosperous defendant at a handsome fee or serves an indigent without compensation in the

discharge of the duty resting upon him as an officer of the Court, the canons of our profession require his entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability."

On January 26, 1976 Counsel was dismissed and a motion was filed with the appeal Court to strike Counsel of Record. The motion was denied thus compounding Petitioner's difficulties. For instance, Petitioner's notices are still being sent to Counsel of Record. Without notice it is very difficult to go forward with an Appeal. In this matter the Appeal Court is further compounding Petitioner's difficulties.

"A client has an absolute and unconditional right to discharge his attorney at any time." DeKorwin v. First National Bank of Chicago, 155 F. Supp. 302.

3. Appeal court erred in affirming conviction because the court's use of the Civil standard for the word 'Willful' in charging the jury was erroneous and constitutes reversible error. The appeal court erred in affirming and the trial court's gratuitous explanation of the term 'Willful' in original and supplemental charge to the jury amounted to instructions for a directed verdict. It is axiomatic that a trial judge may not direct a verdict of builty in a criminal jury case. (United States v. Garaway, 425 F. 2d 185,) In instructing the jury on the elements necessary for conviction under provisions of 26 U.S.C. 7203, i.e., Willful Failure to File a Return, the Court below charged the Jury in accordance to the Civil Definition of the term "Willful'.

"Willful in this context means that such a failure to file must have been deliberate, intentional and voluntary and not the result of some accident or innocent mistake

or mere negligence. The law in this respect says that before someone can be guilty of a criminal offense for failing to file a timely tax return in the manner required, it must have been a willful failure, saving anything short of that for something other than criminal prosecution, only that which involves allegations of willful failure. And it is up to the government in this case to prove this willfulness as I have described it beyong any reasonable doubt. Willfulness in this sense involves an intentional disregard or disobedience of some legal requirement . . .

"The question may be raised as to, well, what if a person failed to file a tax return, though required to do so, but he was doing so as a political protest or because he thought the income taxes were unconstitutional or for some other sincere reason, would that constitute an excuse: No.

"In the question of whether some failure to act is willful, you may look to the entirety of the circumstance. Sometimes it is difficult to prove or establish what a person's state of mind is.

"One has a right to petition his goverment for redress of what he considers to be grievances. But the form in which that is done involves matters of politics, public debate, letters to the editor or presenta tions to cangressmen and the like and constitutes no basis of excusing a clear requirement of the law insofar as payment of taxes or filing a return." (R.T. 375-377)

In Supplement Charge the trial Court re-stated the Civil Standard for "willful" and instructed the Jury to specifically disregard intent and motive as an element for conviction on Criminal charges.

"The term willful as used in this statute means a voluntary, purposeful, deliberate and intentional failure to file a return as distinguished from, for example, an accidental failure, inadvertent failure, or even a negligent failure for some reason to file a return.

"notwithstanding whether it is a good intent or bad intent, if it is a knowing disregard of a requirement of law and is done deliberately and intentionally, then it is a willful action or in this case in the context of this case a willful failure. The law in this regard, believing that, for example, a protest to a particular law does not give one an excuse to disobey it, but they must live with consequences of that, if they choose to do so."

Counsel for Petitioner made timely objections, out of the presence and hearing of the Jury, in each instance. After Original Charge,

Defense Counsel stated, inter alia, that

> "... willfully would be more properly submitted under the holding in United States v. Bishop, 93 Sup. Ct. 2008, which goes on to say that bad faith or ivil motive and want of justification ... that willfully means to act both of intentional and reprehensible qualities and to submit merely on the basis that it requires an act to which the only defense in unitentional acts, a non-purposeful, either negligence or unintended .... renders it impossible for this defendant to receive a fair trial in connection with the matter."

After the Supplemental Charge, Defence Counsel objected to the Trial Courts out-of-context definition of the term "willful".

In considering the effect of the district judge's statements to the Jury, which have been quoted above, this Court should consider that throughout the trial the judge had inflexibly refused

to permit the Defense to raise the issue of evil purpose or bad faith as the criterion of criminal 'willfulness'. By definition Civil 'willfulness' is distinguished from Criminal 'willfulness' on the sole basis of motive. Bouvier's Law Dictionary makes the distinction:

> "It implies that the act is done knowingly and of stubborn purpose, but not with malice; State v. Swain, 97 N.C. 465, 2 S.E. 68; and in penal statutes, it means with evil intent, or with legal malice; Galvin v. Mill Co., 98 Cal. 268, 33 Pac. 93; or with a bad purpose; Com. v. Kneeland, 20 Pick, (Mass.) 2220, quoted in Potter v. U.S., 155 U.S. 446, 15 Sup. Ct. 144, 39 L. Ed. 214. It is frequently understood as signifying an evil intent without justifiable excuse; 1 Bish. Cr. Law 428.

By excluding any references to or consideration of Petitioner's motives --the Court below tacitly led the Jury to conclude that Petitioner was a

miscreant impelled by dark and sinister motives. And by further excluding, both in and out of the Jury's presence, (R. T. 270 & 382-383) any application of the standards of criminal intent and motive set forth in United States v. Bishop 93 S. Ct. 2008 (1973) the trial Court presumed to overtly regulate and control the Defense. In Bishop the United States Supreme Court set square and symmetrical guidelines for determining "willfulness" in both tax felony and tax misdemeanor statutes on the motivational basis as traditionally applied in other criminal prosecutions.

> "(The) Word "willfully" has the same meaning in tax felony statutes as in tax misdemeanor statutes, importing with respect to both a bad purpose or evil motive: disapproving Abdul v. United States, 254 F. 2d 292.
>
> ". . ."willfully" generally connotes a voluntary, intentional violation of a known legal duty, and involves a bad purpose

or evil motive. "Requirement that a tax offense be committed "willfully" is not met if a taxpayer had replied in good faith on a prior decision of the Supreme Court."

In what appears to have been an attempt to ride on the momentum of previous (but dissimilar) Tax Protest cases in which unwitting Defendants had also been convicted on the Civil definition for the term "willful", the trial Court suggested that since both cases had been decided by the Fifth Circuit subsequent to the Bishop case, (which was decided on May 29, 1973), they were the controlling case law in this circuit, (R.T. 383-384) Supreme Court rulings, notwithstanding. The trial Court further compounded their errors by ignoring that the United States Supreme Court stated their reason for reviewing the Bishop case on page 2011;

"Since the meaning of "willfully", as used in the tax crime statutes has divided the circuits, we granted certiorari, 409 U.S.

841, 93 S. Ct. 64, 34 L. Ed. 2d 79 (1972)";

and in footnote 2, page 2011, pointed out that;

"Other inconsistencies in interpreting the word "wilfully" have compounded the confusion."

B. The Trial Court shifted the burden of proof onto the Petitioner. By preventing the Defense from relying on the criminal standards of "willfulness" set forth in United States v. Bishop, 93 S. Ct. 2008 and prior Supreme Court decisions, such as United States v. Murdock, 54 S. Ct. 389 (1933), which the High Court, itself, used as its precedent in Bishop, the court below shifted the Prosecution's burden of proof onto Petitioner. The Trial Court's hostile insistence on restricting the Defense to the Civil Standard of "willfulness" operated to stifly any showing of Petitioner's good intents and motives or the First Amendment grounds on which he based his failure to file in order to achieve standing before the court to redress his grievances.

The mechanics involved here are similar to those

which required the Defendant in United States v. Falk, 479 F. 2nd 616 (1973) at 621 to refuse induction into the Armed Forces and failure to possess a draft registration card, as a conscientious objector, in order to be in the position to assert a valid claim. Had instant Petitioner complied with statutory requirements to file returns he would have no standing for redressing his grievances.

By filing returns, which Petitioner regards as violative of his Freedoms as a Protestant because they follow the Religious Liturgy of Confession, would have been an act of consent and a forfeiture of his right to claim injury thereby.

The attitude of the judge throughout trial prevented the Defense from introducing explanations of Petitioner's understanding of the First Amendment as an Injunction that enjoins Civil servants from resorting to ecclesiastical law under color of secular practices to suppress Dissent and Protest amongst the tiny minority

of any generation bold enough to be non-conformists that they might redress grievances. Petitioner knows of no other valid way to uphold the Constitution and rejects the nonsensical suggestion of the trial court that redress of grievances is not a matter of the courts or judiciary, but is to be pursued by public debate letters to the editor, or writing members of Congress.

The Appeal court erred in affirming conviction and the trial court erred by not permitting Petitioner to show he was a victim of selective and discriminatory prosecution. The chronology of events preceding indictment suggests that Petitioner was a victim of Selective and Discriminatory Prosecution. Less than a month after Petitioner placed an Article, critical of the income tax scheme, as paid advertising, in the January 23, 1975 Wetumpka (Ala.) Herald, he was indicted for Willful Failure to File Returns. There are two ironic aspects to these seemingly connected events. The First is that it disproves

the Trial judge's bizarre theory about Newspapers being forums through which Redress of Grievances can be readily procured. And the Second is that the Article, itself was a description of the way Internal Revenue fails to enforce the provisions of 26 U.S.C. 6012 (supra) by failing to prosecute Career Fiduciaries under the Criminal statutes of Title 26. The layout of the full-page Advertisement included the pertinent provisions of 26 U.S.C. 6012 (the income tax filing statute) and pointed out that Internal Revenue practiced a policy of granting Indulgences to Banks and attorneys whose income is largely derived from Fiduciary activities.

It seems the trial Court was unaware that in December 1974, the Senate Subcommittee on Constitutional Rights published a highly documented Report entitled POLITICAL INTELLIGENCE IN THE INTERNAL REVENUE SERVICE: THE SPECIAL SERVICE STAFF. The Report was compiled, after an 18 month investigation of Internal Revenue's domestic

espionage programs, under direction of Senator Sam J. Ervin, Jr., the Subcommittee Chairman. The Subcommittee found that the activities of Internal Revenue's Special Service Staff, formed in 1969, were focused on a broad spectrum of Political Activists. Certain individuals and groups were "targeted" for the Secret Spy unit's attention and a total of 8,585 individual files and over 3,000 organizational dossiers were collected. Both individual and group files covered a wide range of backgrounds and religious and political persuasions. Included in the records developed by the Special Service Staff were persons identified as Tax resistors, Catholic, Protestant and Jewish Clergymen, Authors, Civil Rights Leaders, Actors, Actresses. Labor Organizers, Anti-war activists and draft-card burners. The common denominator emerged as the individual's public espousal of unpopular or dissident causes. The stated goal of the secret organization was to collect data and

intelligence for dissemination to Internal Revenue's compliance Division for later action by the Audit and Intelligence Divisions and thus to "provide a greater degree of assurance of maximum compliance with the Internal Revenue laws by those involved in extremist activities and those providing financial support to these activities." (Pages 14 and 144, Political Intelligence in the Internal Revenue Service.) Shortly before the secret unit was (ostensibly) disbanded officially in August 1973, a status report read:

> "Beginning in early 1972 the staff experience indicated that a definite trend had developed away from a focusing of attention on those dissident, activist and extremist groups of the late sixties and early seventies. The interest and primany thrust of the Staff was more clearly refocused upon groups and individuals actively urging noncompliance with the tax laws." (p. 14 Political Intelligence in the Internal Revenue Service.)

Senator Ervin roundly condemned the objectives of the Special Service Staff in his preface to the Political Intelligence in the Internal Revenue Service Report. He saw Internal Revenue's domestic Intelligence mission as covert assaults on, threats to and abuses of the Individual's First Amendment Freedoms of thought, speech, and expression:

> "The purpose of the Internal Revenue Service is to enforce the tax laws, not to enforce political orthodoxy.
>
> "Governments quickly forget that they are servants, not masters of the people.
>
> "They (the Special Service Staff) found over 10,000 "enemies", far more than the White House had listed, and far less than the hundreds of thousands the Army discovered.
>
> "Dangers to Liberty, we have been told, come from those in government, who are well-meaning but without understanding of the other price of liberty. That is the price we must pay in political and social unrest, in

hearing ideas we detest, expressed by people we abhor. But as long as those ideas are protected by the Constitutional liberties of free expression, they must be tolerated, not suppressed by IRS, the Arm, or any other government authority.

"It is soon enough to act when, if ever, those ideas are transformed into violence. To act earlier is to do far greater injury to the Constitution which all government officials are sworn to uphold."

Again it may be purely coincidence that shortly after Petitioner was defeated as a candidate for the State Senate in the Fall of 1970, he received his first visit from Special Agent Doyle L. Coats of Internal Revenue's Intelligence Division. (R?T? 95-96) The main plank in Petitioner's platform was abolition of the (State) Income Tax. He received substantial newspaper publicity and his message was broadcast over five (5) local radio stations.

This event seems to further contradict the trial judge's theory about using the media to redress grievances. Furthermore the efforts of Congressional Committees and respected Senators like Sam Ervin to correct wrongdoing by lengthy investigations and exhaustive Reports thereupon, denouncing Internal Revenue's Surveillance operations, do not seem to have redressed Petition's grievances, either. Instead, each time Petitioner expressed his views through the means and channels the Trial judge recommends for redressing grievances, he elicited responses from Secular servants that gave him the unpleasant sensation he was being 'chilled' for exercising First Amendment Freedoms.

Whether there is a connection between the foregoing and the urgency to prosecute and convict Petitioner just before the 1975 Income Tax Filing date, when Counsel was reluctant to go to trial because insufficient notice had left him unprepared, is still a matter of

speculation. (R.T. 71-93) Undue haste is as much a denial of Justice as undue delay. In the instant case it placed Petitioner at a severe disadvantage by preventing him from fully explaining to Counsel the suspicious chronology of events preceding indictment and prosecution. Under cross-examination, Revenue Agent Barefielf stated that after August 1973 he had no connection with Petitioner's case. "until I was called to Birmingham here to act as a witness on very short notice".

The mood in the Federal courthouse at Birmingham the second week of April 1975 seemed to be to disallow time for Pre-trial inquiry and investigation and to deny all Defense Motions for the sake of hustling Petitioner to trial at the earliest possible moment. Hence, Petitioner was unable to sufficiently acquaint Counsel with the background of his case to permit Counsel to enter a timely Motion for Evidentiary Hearing for denial by the Court below in accordance

to the prevailing mood. While Petitioner was being investigated for Criminal prosecution for vocally protesting against the Income Tax Scheme, Internal Revenue was proceeding civilly against Marguerite McGill, an Opa-Locka, Florida, resident who has since moved to Michigan, for doing exactly what Petitioner did for exactly the same years. Although Mrs. McGill has strong feelings about the Income Tax scheme, she has never publicly aired them in the press or electronic media. Nor has she identified with groups or religious associations that openly challenge the Income Tax program.

Furthermore time did not permit Petitioner to explain to Counsel that the reason Bankers and attorneys, who enrich themselves as career fiduciaries, are not inclined to vocally protest the Income Tax strategy, is because they enjoy the remission of temporal punishment Internal Revenue grants them by Plenary Indulgence.

Petitioner contends that every Freedom the First Amendment affords him by Injundtive relief from Church/State rule has been abridged in the course of investigating, indicting and prosecuting him for being a Tax Protester (Protestant). Petitioner further contends that the Fifth Amendment is likewise an Injunction which protects him against being subjected to the discriminatory practices of Inquisitorial Politics.

The Fifth Amendment, like the First, is designed to immunize American citizens against proponents of Religio/Political Orthodoxy making public scapegoats of those who express dissident or protestant view on the one hand while indulgently remitting the same 'Sins' when they are silently committed by a supposedly 'better class' of people, on the other.

The First and the Fifth Amendment Injunctions and the other Freedoms and Immunities enumerated in the Bill of Rights, directly or by injunction, were not invented in Philadelphia. They are the

well pondered safeguards against a repeat performance of the historical trampling of individual Freedom and Liberty that Church/State Rule generated in European countries. Accordingly, the Fifth Amendment guarantees to a defendant in a federal criminal prosecution the right to have the law applied against him in a non-discriminatory fashion. Bolling v. Sharpe, 347 U.S. 497 (1954); Washington v. United States, 130 U.S. App. D.C. 374, 401 F 2d 915 (1968.

The historical antecedent to this invocation of Fifth Amendment protection is found in Yick Wo v. Hopkins, 118 U.S. 356 (1886) where the Supreme Court first forbade government officials from applying the law "with an evil eye and an unequal hand, so as practically to make unjust and illegal discrimination between persons in similar circumstances."

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

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May 3, 1976

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INDEX

	Page
OPINIONS BELOW	2
JURISDICTION	2
QUESTIONS PRESENTED	2-4
STATUTES INVOLVED	4-8
STATEMENT	8-22
REASONS FOR GRANTING THIS WRIT	22-52
CONCLUSION	53
TABLE OF AUTHORITIES	54-55

CERTIFICATE OF SERVICE

I hereby certify that three (3) true and correct copies of the foregoing Petition for Writ of Certiorari was served on the Solicitor General, Department of Justice, Washington D.C. 20530, by placing the same in the United States Mail, postage prepaid, CERTIFIED FIRST CLASS MAIL/RETURN RECEIPT REQUESTED/ No. 20530, the 4th day of May, 1976.

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